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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,188	11/21/2001	Birgit Jordan	DEAV2000A051USNP	9429

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ANDREA Q. RYAN  
SANOFI-AVENTIS U.S. LLC  
1041 ROUTE 202-206  
MAIL CODE: D303A  
BRIDGEWATER, NJ 08807

EXAMINER
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CHEN, STACY BROWN

ART UNIT	PAPER NUMBER
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1648

NOTIFICATION DATE	DELIVERY MODE
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08/13/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPatent.E-Filing@sanofi-aventis.com  
andrea.ryan@sanofi-aventis.com

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/989,188	<b>Applicant(s)</b> JORDAN ET AL.	
	<b>Examiner</b> Stacy B. Chen	<b>Art Unit</b> 1648	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 14 July 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1,3-5,8,9,12,13,16-19,49 and 50.
- Claim(s) withdrawn from consideration: 14 and 15.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

Continuation of Item 7. Applicant's arguments regarding the rejection of claims 1, 3-5, 8, 9, 12, 13, 16-20, 49 and 50 under 35 U.S.C. 103(a) as obvious over Gertler in view of Reinhard and Evangelista have been carefully considered but fail to persuade. Applicant argues that none of the cited references teach the step of identifying the chemical compound as useful as a medicament for treating a cardiovascular disorder, an inflammatory disorder and/or a disorder of blood vessels. Applicant asserts that this step is involved in the development process for developing, testing, making and marketing an effective treatment for one or more of the identified disorders. Applicant also asserts that there would have been no reasonable expectation of success that practicing such teachings as found in the references would successfully identify a compound for possible use as medicament as claimed.

In response to Applicant's arguments, the Office does not consider the limitation regarding the specific disorders to be a patentable distinction over Gertler. The limitation is merely an intended use of the compound. The use of the compound according to the instant claims is as a "possible use in a medicament for treating a disorder". Its intended use does not alter the method steps or reagents such that the method is distinguished over Gertler. In other words, the method steps and reagents remain the same as those described in Gertler's method. Compounds identified by Gertler's method are expected to have the same properties as those compounds identified by the instant method because the method of identifying the compounds is the same. Applicant's introduction of an intended use has not changed the method such that different compounds are identified relative to Gertler's method. There are no active steps in the method that lead one to identify compounds for possible use of treating the claimed conditions as opposed to compounds for treating other conditions. The mental step of part e) is not supported by the active steps because the active steps are not specific to the identification of compounds specific for treating the claimed conditions. The rejection is maintained for reasons of record.

/Stacy B. Chen/  
Primary Examiner, Art Unit 1648